

**Letter of Findings: 04-20210060
Sales and Use Tax
For The Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business protested that certain equipment is entitled to an exemption. Because the equipment is not used directly in the manufacturing process, the equipment is not exempt.

ISSUE

I. Consumer Use Tax - Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-3-4; IC § 6-2.5-5-3; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 462 (Ind. 2012); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax Ct. 1993); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Department of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind. 1983); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-8](#).

Taxpayer protests the assessment of sales tax on tangible personal property.

STATEMENT OF FACTS

Taxpayer is an out-of-state company with a location in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined Taxpayer purchased items on which sales tax was not paid. The Department therefore issued proposed assessments for use tax. Taxpayer protested a portion of the proposed assessment related to specific items of equipment. Taxpayer requested resolution without an administrative hearing. This Letter of Findings results. Additional facts will be provided as necessary.

I. Consumer Use Tax - Imposition.

DISCUSSION

Taxpayer protests the imposition of use tax on materials used around a weigh pod - specifically, a walkway/catwalk structure and structural supports. Taxpayer believes the walkway/catwalk structure around the weigh pod should be exempt because the structure is used to access the weigh pod, used for routine maintenance, and is required for worker safety by OSHA. Taxpayer argues the structural supports of the weigh pod are integral parts of the "Silo and Conveyor System" and should also be exempt.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 462, 466 (Ind. 2012).

Indiana imposes an excise tax called "the state gross retail tax" or "sales tax" on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A person who acquires property in a retail transaction is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called a "use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a

retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is a functional equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

The complementary relationship between sales and use tax ensures non-exempt retail transactions that escape sales tax liability remain taxed. *Id.*; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 468 (Ind. Tax Ct. 1993). If sales tax is paid at the time of the transaction, an exemption from use tax is granted under IC § 6-2.5-3-4. A statute which provides a tax exemption is strictly constructed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974).

To trigger the imposition of Indiana's use tax, tangible personal property must be acquired in a retail transaction. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), (c); IC § 6-2.5-3-2(a). Generally, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. [45 IAC 2.2-5-8](#).

Taxpayer argues the walkway/catwalk structure and structural supports are exempt because these parts are directly involved in the manufacturing process. The relevant statute is IC § 6-2.5-5-3, which states, in part:

(b) Except as provided in subsection (d), transactions involving manufacturing machinery, tools, and equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax if the person acquiring that property acquires it for **direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.** (**Emphasis added.**)

Items must meet this "double direct" test to qualify for an exemption. As discussed in *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991), the "double direct" test inquiry focuses on the production process itself, broadly defined to encompass all the production steps involved in transforming a work in progress into a finished marketable product. *Id.* at 401. For example, the Indiana Supreme Court in *Cave Stone* broadly defined this process, stating that "the production or processing of the stone begins at the time of the initial stripping, drilling, and blasting at the quarry and ends at the time the stone is stockpiled." *Id.* quoting *Indiana Department of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 524 (Ind. 1983). Equipment meets the double direct standard when it is used in an essential and integral part of an integrated production process. *Id.*

In this case, Taxpayer manufactures pavement preservation products for asphalt and concrete ("seal coating products"). The manufacturing process begins when powdered clay is transferred from a storage silo to the weigh pod. The clay is blown into the weigh pod via a series of tubes connecting the silo to the weigh pod. The weigh pod is located on top of the load cells. The weigh pod measures a specific amount of clay depending on the type of sealing coating product being manufactured. Once the weigh pod is filled with the correct amount of clay, an employee releases the clay into a load cell. Each load cell contains a separate batch of seal coating product, and several batches can be manufactured simultaneously.

Taxpayer argues the walkway/catwalk structure around the weigh pod and the structural supports of the weigh pod are exempt because these parts are directly involved in the manufacturing process. In support, Taxpayer provided purchase invoices, photographs of the silo and weigh pod, and an explanation of the manufacturing process.

After reviewing Taxpayer's documentation, the Department is unable to agree with Taxpayer's assertion that the walkway/catwalk structure and structural supports of the weigh pod are exempt as manufacturing equipment. As previously discussed, only when the use of the tangible personal property has met the "double direct" test is a Taxpayer entitled to a manufacturing exemption. Taxpayer's documentation and explanation of the manufacturing process indicate the walkway/catwalk structure is not part of the direct manufacturing process. This structure is mainly used for maintenance of the weigh pod. An employee making a batch of seal coating product controls the release of clay from the weigh pod into the load cell from a room located below the equipment. No one is required to be on the walkway/catwalk structure of the weigh pod to participate in the manufacturing process. In order to be exempt, the equipment must have an "immediate link with the product being produced." *Cave Stone*, 457 N.E.2d at 525. The walkway/catwalk structure does not have an "immediate link" to the manufacturing of the seal coating product.

Another basis for exemption of the walkway/catwalk structure is as worker safety equipment. Taxpayer suggests worker safety as a basis for exempt status by stating the walkway/catwalk structure is mandated by OSHA and required under federal safety guidelines.

[45 IAC 2.2-5-8](#) provides:

(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process, or by itself, cause a change in the product, is not determinative.

(F) Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

Taxpayer's explanation of the manufacturing process indicates the employee controlling the release of powdered clay from the weigh pod into a load cell controls the operation in a room on ground level of the operation. Taxpayer has not established that anyone is required to be present on the walkway/catwalk structure while the seal coating product is manufactured. [45 IAC 2.2-5-8](#) requires the exempt "safety equipment" to "allow a worker to participate in the production process without injury." Taxpayer has cited no federal, state, or local law, statute, or ordinance that requires this equipment for worker safety reasons. Nor has Taxpayer provided any documentation or analysis establishing that the walkway/catwalk structure prevents contamination of its product during the production process. Therefore, the walkway/catwalk structure does not qualify as safety equipment.

Similarly, the structural supports for the weigh pod also have no direct connection to the manufacturing of the seal coating product. The structural supports hold the weigh pod in a vertical position on top of the load cells. Although the weigh pod may be part of the integrated production process, the structural supports do not have an immediate link to the production of the seal coating products. These supports do not meet the double direct test, as they are not essential to the production of the seal coating products. "The fact that a particular property may be considered essential to the conduct of the business of manufacturing because its use is required. . .by practical necessity does not itself mean that the property 'has an immediate effect upon the article being produced.'" [45 IAC 2.2-5-8\(g\)](#). Thus, the structural supports for the weigh pod are not exempt.

In conclusion, the walkway/catwalk structure does not qualify as production equipment, safety equipment, or contamination prevention equipment. Therefore, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

December 20, 2021.

Posted: 03/02/2022 by Legislative Services Agency
An [html](#) version of this document.